

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, : 09-CR-0003(CBA)
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-against- : United States Courthouse
: Brooklyn, New York
:
:
DEWAYNE TAYLOR, : Tuesday, February 9, 2010
: 10:30 a.m.
:
Defendant. :
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TRANSCRIPT OF CRIMINAL CAUSE FOR SENTENCING
BEFORE THE HONORABLE CAROL BAGLEY AMON
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

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1 (In open court.)

2 (Defendant enters the courtroom.)

3 COURTRoom DEPUTY: All rise, the United States
4 District Court for the Eastern District of New York is now in
5 session, the Honorable Carol Bagley Amon is now presiding.

6 (Honorable Carol Bagley Amon takes the bench.)

7 COURTRoom DEPUTY: Calling criminal cause for
8 sentencing in Docket No. 09-CR-0003, *United States of America*
9 *against Dewayne Taylor.*

10 Counsel, please note your appearances for the
11 record.

12 MR. AMATRUDA: For the United States of America,
13 Assistant United States Attorney Matthew S. Amatruda.

14 Good morning, Your Honor.

15 MR. ANDINO: Lucas E. Andino for Dewayne Taylor.

16 Good morning, Your Honor.

17 THE COURT: Good morning.

18 Mr. Andino, did you have anything further to
19 add about any of the issues in light of the Government's
20 letter.

21 MR. ANDINO: I have nothing to add to the letter,
22 Your Honor. I did want to make a comment regarding the
23 Career Offender Guideline discussion we had the last time we
24 were here, and the comment I wanted to make was that both the
25 minimum sentence and the maximum of life that indicate the

1 guideline to which he gets assigned under the Career Offender
2 Guideline are based on the hundred-to-one disparity between
3 powder and crack cocaine.

4 THE COURT: Only to the extent that -- not the
5 guideline disparity. What you are referring to is a
6 statutory disparity.

7 MR. ANDINO: Yes, Your Honor. I did want to raise
8 that point, yes; that, if they were treated equally, it's not
9 a great improvement but he would be, his maximum as a
10 predicate would be 30 years which would then be under the
11 4B 1.1; the second, the category underneath of 37 would be
12 25 years or more, his offense level would be 34 which, at a
13 Criminal History VI, with be 262 to 327 months.

14 THE COURT: How are you calculating that?

15 MR. ANDINO: In the statute.

16 THE COURT: I know but what amount of drugs?

17 MR. ANDINO: Based on the amount of drugs in the
18 offense. In other words 2B deals with 500 grams or more of a
19 mixture containing cocaine, and I'm going to sub-C of 21
20 U.S.C. 841(b)(1)(c).

21 THE COURT: How many grams are you relying on?

22 MR. ANDINO: The 122 grams that were involved in
23 the offense, the offense itself. The actual offense of
24 conviction.

25 THE COURT: How many grams?

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1 MR. ANDINO: It's 122.

2 THE COURT: All right. So you get to a Level 34,
3 Criminal History Category VI.

4 MR. ANDINO: Yes.

5 THE COURT: And how do you arrive at that?

6 MR. ANDINO: Because under 21 U.S.C. 841(b)(1)(c)
7 that would be the -- if the powder and crack cocaine were
8 treated equally, there would be no minimum sentence. There
9 would be a maximum of 20 except if the person has been
10 sentenced to a term of -- a prior felony drug offense, the
11 term of imprisonment would be then not more than 30 years.
12 In other words, the maximum would then, instead of life be
13 30 years.

14 THE COURT: What would be the mandatory minimum be?

15 MR. ANDINO: There would be no mandatory minimum.

16 THE COURT: With the second felony offender,
17 though, there would be no mandatory minimum.

18 MR. ANDINO: Originally, it would be no more than
19 20 years, but if he had a prior drug felony it would be no
20 more than 30 years.

21 THE COURT: How do you -- I'm still not sure how
22 you get to a guideline of 262 to 327.

23 MR. ANDINO: Because under 4B 1.1.

24 THE COURT: No. The amount of drugs would be
25 122 grams, you're translating that to cocaine. So, what

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1 would that be? How are you calculating it, just tell me.

2 MR. ANDINO: I'm assuming a Career Offender
3 finding.

4 THE COURT: Okay.

5 MR. ANDINO: Under 4B 1.1(b), the maximum would be
6 25 years or more which is Level 34.

7 THE COURT: Okay.

8 MR. ANDINO: That's what I'm assuming.

9 THE COURT: With no enhancements.

10 MR. ANDINO: That's just the Career Offender.

11 THE COURT: Wouldn't it be a Level 32 under your
12 analysis if it was 122 grams of cocaine? An offense of
13 20 years or more.

14 MR. ANDINO: What I'm saying, Your Honor, under the
15 guideline, 4B 1.1(b), where the statutory maximums are
16 discussed.

17 THE COURT: Yes.

18 MR. ANDINO: Under the statute, my understanding is
19 his maximum would be 30 instead of life.

20 THE COURT: For 122 grams of cocaine?

21 MR. ANDINO: Yes.

22 THE COURT: Wouldn't it be 20?

23 MR. AMATRUDA: I think, Judge, what Mr. Andino is
24 saying that ordinarily it would be 20 but the effect of a
25 prior felony information on a (b)(1)(c) count is not to

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1 establish a mandatory minimum. The fact is a zero minimum
2 stays, but it does it raises the maximum to 30 years.

3 THE COURT: A prior felony offender does.

4 MR. AMATRUDA: Correct.

5 THE COURT: Okay. I'm sorry, I didn't understand
6 that.

7 MR. ANDINO: I wasn't more articulate.

8 THE COURT: All right.

9 Is there anything else?

10 MR. ANDINO: Your Honor, we had also in the -- we
11 didn't discuss it last time in the various submissions --
12 we've referred a number of times to the yield which I, you
13 know, we just didn't bring up.

14 I believe I've addressed that in the
15 submissions, in other words, the some of the estimates that
16 are proposed don't really take into account that there's a
17 reduction in yield if we're going to count it as crack
18 cocaine as opposed to powder.

19 And then the only other thing is the end of
20 our last submission, I see there was a letter regarding the
21 separation, most of which is blacked out, so there was a
22 letter about a co-defendant being separated or what I'm just
23 asking for at the end of our last submission was that if
24 unless there was some reason why there's a need for an
25 ongoing separation with Mr. Pughe, we'd like that Mr. Pughe,

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1 Mr. Pughe's designation, wherever it is, not disqualify
2 Mr. Taylor from being someplace where his family can more
3 easily, you know, visit him than not. So, I'd address that
4 at the end of our last submission, apparently there is an
5 ongoing separation.

6 THE COURT: I don't think it's the policy of the
7 Bureau of Prisons to put co-conspirators in the same
8 institution or is there not a policy?

9 MR. AMATRUDA: Normally, they follow, I believe,
10 the rule -- they follow the separation requests. At least,
11 Judge, I don't know for a fact but I can tell the Court that
12 I frequently get questions about should so and so and so and
13 so be continued to be separated and those people who would
14 have been sent to their institutions. So, I can only assume
15 that from that they may allow it put I don't know for sure.

16 THE COURT: Is there any reason to keep a
17 separation order on file at this point in time?

18 MR. AMATRUDA: Between?

19 THE COURT: Mr. Taylor and Mr. Pughe.

20 MR. AMATRUDA: Between Pughe and Taylor, no, Judge.

21 THE COURT: If there is no reason to do it, maybe
22 you want to withdraw whatever.

23 MR. AMATRUDA: I'll get a request from the Bureau
24 of Prisons whether they should continue to be separated, I
25 can tell them no.

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1 THE COURT: Does the Government want to further add
2 anything?

3 MR. AMATRUDA: Just one sentence. I would just
4 say, and I don't think there's really much agreement here,
5 because the court obviously knows other positions but the
6 defendant refers to obviously the offense of conviction being
7 122 grams of a substance as well as the yield for powder
8 cocaine that then gets developed into crack cocaine but it's
9 the offense of conviction is conspiracy.

10 So, obviously, it's not just 122 grams of
11 whatever substance you want and the same would go for the
12 question that, as far as it's pertinent here, of yield versus
13 not as the essence in the conspiracy is the agreement.

14 THE COURT: As I understand the Government's --

15 MR. AMATRUDA: That's all I have to say.

16 THE COURT: As I understand the Government's
17 position, whether you call it part of the conspiracy or same
18 course of conduct with respect to Ms. Hiatt's testimony, that
19 her testimony established according to the Government, a half
20 a kilo of crack for a period of eight months; is that
21 correct.

22 MR. AMATRUDA: Yes.

23 THE COURT: A week.

24 MR. AMATRUDA: My position hasn't changed from my
25 papers but I believe --

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1 THE COURT: Isn't that your position with respect
2 to the 2006?

3 MR. AMATRUDA: Let me double check so that I
4 don't -- that's right, Judge.

5 THE COURT: And then there was crack that she
6 observed or he spoke about in the 2008 period which you're
7 saying is a maximum of about two kilograms, correct?

8 MR. AMATRUDA: Judge, I think what I was saying was
9 seven kilograms either, you know, the conservative estimate
10 would be one kilogram for 2008 and the -- and I think that a
11 legitimate estimate is still and a conservative one would be
12 an additional seven kilograms which would represent kilogram
13 per month in 2008.

14 MR. ANDINO: I'm sorry, I thought in 2008.

15 THE COURT: How much for 2008.

16 MR. AMATRUDA: Seven kilograms for the entire 2008.

17 MR. ANDINO: From September to mid-November.

18 MR. AMATRUDA: No, 2008. January of 2008 to
19 November of 2008.

20 THE COURT: I thought your conservative estimate
21 was two, I'm sorry about that.

22 MR. AMATRUDA: I'm just looking at my December 16th
23 letter when I was reading from Page 6, the second full
24 paragraph.

25 THE COURT: I thought your conservative calculation

1 was two kilos, the sum of two trips. One kilo, the sum of
2 two trips.

3 MR. AMATRUDA: I think they were both conservative
4 calculations, but I think what I was saying was that no --
5 assuming no trips happened in 2008 other than ones between
6 September and November that would be a kilogram. But that's
7 assuming no trips between February of 2008 through September
8 of 2008.

9 THE COURT: All right. There are a number of
10 issues to resolve. I think that there are, if I am correct,
11 there's an outstanding pro se motion for a new trial; is that
12 correct, Mr. Andino, you wanted that ruled on based on
13 conflict of interest --

14 MR. ANDINO: Yes, Your Honor.

15 THE COURT: -- that was being pressed by the
16 defendant pro se and I'm going to deny that motion.

17 My understanding of the factual basis for that
18 is that at some point in the past, the Federal Defenders
19 represented Darien Pughe fleetingly, as I recall, at an
20 arraignment in connection with an entirely unrelated matter.

21 That does not, in this Court's eyes, give rise
22 to an actual conflict and I don't think the circumstances
23 that have been presented that it rises even to a potential
24 conflict of interest. So, to the extent that there is a
25 motion for a new trial that motion is denied.

1 The next thing that the Court is required to
2 do procedurally is to determine what the training is in this
3 case. The Court is not bound to follow that guideline range.
4 The only thing that completely ties the Court's hands in this
5 case is the mandatory minimum period of 20 years. But
6 nonetheless procedurally the Court is required to determine
7 the guideline range.

8 First of all, that requires determining the
9 amount of crack cocaine involved in this offense and any
10 relevant conduct. The Court went back and reviewed the
11 testimony of the trial witness, Lindsey Hiatt. She testified
12 to occurrences were the Court to find them credible would
13 clearly be the same course of conduct as that is referred to
14 the guideline calculations. She explained that the defendant
15 engaged in crack cocaine trafficking; it was similar in
16 method of operation. He would come from New York to sell the
17 crack cocaine in Tennessee.

18 It was in a period of 2006 to a point in time
19 in 2008 in which he then went back to prison for 18-months
20 and then after that resumed dealing in crack cocaine. This
21 was clearly the same course of conduct under 1B 1.3.

22 I found Ms. Hiatt's testimony to be credible,
23 I went back and reviewed that testimony. It seems like the
24 2006 portion of her testimony conservatively, if I understand
25 the Government's position it would have been a half kilo of

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1 crack a month as opposed to a week; is that correct,
2 Mr. Amatruda?

3 MR. AMATRUDA: I think that's right, Judge, because
4 as a conservative calculation --

5 THE COURT: And we're talking about eight months?

6 MR. AMATRUDA: For the 2006 period for?

7 THE COURT: The 2006 period?

8 MR. AMATRUDA: Yes, Judge.

9 THE COURT: So, that would equal, for that period,
10 four kilos.

11 MR. AMATRUDA: It was half a kilogram a month, let
12 me just. Judge, just so Your Honor notes other position to
13 correct myself, we had, Your Honor, our calculation was one
14 half kilogram per week which would have been.

15 THE COURT: That's what I thought you had said.

16 MR. AMATRUDA: That's right, per week, which then
17 we had calculated as two kilograms per month which would then
18 amount to 16 kilograms and then we added to that we were
19 adding three or four kilograms that Ms. Hiatt saw in the
20 hotel room at the beginning of 2006.

21 So, that was the basis of our calculation.
22 And then, when I was referring to the other drugs, that my
23 estimate on Page 6 of my letter that I referred to took the
24 19 kilograms from 2006 and then added either, if you just
25 take September through November of 2008 conservatively one

1 kilogram during that entire period without counting any other
2 period during 2008 that's how I got to 20 kilograms.

3 And then if you expand that to include the
4 periods for all the periods from 2008, my estimate was
5 27 kilograms.

6 THE COURT: Well, my view of it is this. I think
7 that her testimony establishes repeated transactions in crack
8 cocaine for a period of time in 2006 and then some limited
9 additional observations in 2008. The top base offense level
10 is 38 and that requires more than 4.5 kilograms of cocaine
11 base. Based on Ms. Hiatt's testimony, there is clearly more
12 than 4.5 kilograms of cocaine base. And so, that would take
13 us to a Level 38.

14 Now, there are other enhancements that have
15 been challenged that the Government seeks. And the first of
16 those is for obstruction of justice. And under a two-point
17 enhancement under 3C 1.1, I have reviewed the conversations
18 that were referenced in the Government's letter of December
19 16 and quoted therein.

20 It seems to me that they rather plainly show
21 that the defendant willfully obstructed or sought to impede
22 the administration of justice by making concerted efforts by
23 asking family members to place money into her account to
24 assure that Jessie Wright did not become a witness for the
25 Government.

1 I think what corroborates that is the proffer
2 earlier from Ms. Wright in which she said there were efforts
3 made by both Mr. Taylor and I think Mr. Pughe as well to have
4 her take all of the responsibility for the criminal conduct
5 that underlies their joint arrest.

6 In my view, seeking to persuade someone not to
7 testify constitutes obstructive conduct and I think that the
8 two points should be added to the offense level of 38. The
9 Government has also sought a leadership role for Mr. Taylor;
10 that, in this Court's view, is less clear.

11 I'm prepared to accept in the relevant conduct
12 as well as in the circumstances of the offense that
13 Mr. Taylor might have been the one who was more important in
14 the overall transactions, but the fact that he was the one
15 responsible for obtaining the drugs and getting the drugs or
16 causing the drugs to be brought to New York doesn't
17 necessarily translate into any type of managerial role or
18 supervisory role.

19 It's not plain to me that he acted in the
20 transactions that have been set forth as anything greater
21 than the supplier of the drugs to other people. So, I'm -- I
22 don't believe, on the facts that are before me, that I'm
23 satisfied that the Government has made out an aggravating
24 role. That, I believe, if I'm correct, would make the
25 offense Level 40.

1 Now, the operation of the Career Offender here
2 would come into play. It is clear that the defendant here is
3 a career offender under 4B 1.2 based on his prior felony for
4 controlled substances offenses. I think the ones referred to
5 in Paragraph 49 and Paragraphs 58 I was satisfied based on
6 the documentation presented by the Government last time that
7 with respect to the '93 conviction he was still on parole so
8 the timeliness was met. There's no challenge to the
9 conviction set forth in Paragraph 58 so he is, without
10 question, it seems to be a Career Offender.

11 My understanding of the Career Offender
12 Guideline, and the parties can correct me if I'm wrong about
13 this, but I believe if his guideline is actually higher than
14 the Career Offender, it is the guideline that controls; is
15 that correct.

16 MR. AMATRUDA: Yes, Judge. So, at a Level 40,
17 Criminal History Category of VI, that would be 360-to-life.

18 MR. ANDINO: Your Honor.

19 THE COURT: Yes.

20 MR. ANDINO: I don't know that it makes a
21 difference, but I believe that in the PSR, the Criminal
22 History Category was only VI because of the operation of the
23 Career Offender Guideline, so I believe it was.

24 THE COURT: What would it have been?

25 MR. ANDINO: I believe it was five.

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1 THE COURT: Is that correct?

2 MR. LANIGAN: That is correct, Your Honor.

3 THE COURT: Okay.

4 MR. ANDINO: It doesn't really change the guideline
5 range.

6 THE COURT: It would still be 360-to-life on a 40,
7 Criminal History Category V. The guidelines are the same and
8 the guidelines are the same if the Career Offender applied.
9 If the Level 37 applied it will still be the same because
10 that is also 360-to-life.

11 MR. AMATRUDA: That's right, Judge.

12 THE COURT: So, any way you analyze this, the
13 guideline range that the Court would find would be
14 360-to-life. It's also apparent that as a guideline matter,
15 even if the cocaine were treated as -- if the crack were
16 treated as cocaine, he would still be at 360-to-life as a
17 result of the statutory requirement.

18 In other words, his original presentence
19 report which only held him accountable for the 122 grams,
20 that's a separate matter. If we went with his original
21 presentence report, and he was only held accountable for
22 122 grams, under the guidelines it would still be
23 360-to-life. That was his original guideline range only
24 holding him accountable for the small amount of crack.

25 MR. ANDINO: Can I just have a moment, Your Honor?

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1 THE COURT: I'm pretty sure, that's correct.

2 MR. AMATRUDA: Judge, that would be based on the
3 Career Offender finding.

4 THE COURT: Based on the Career Offender.

5 MR. AMATRUDA: Based on the Career Offender and the
6 statute of conviction.

7 THE COURT: Right.

8 MR. ANDINO: In other words, what Your Honor just
9 said is based on Career Offender.

10 THE COURT: Right. Okay.

11 Now, so the disparity within the guidelines,
12 this is getting a little hypertechnical, but the disparity
13 within the guidelines as to the way the guidelines treat
14 crack versus cocaine doesn't result, really, in a different
15 guideline sentence because, as a result of the statute, not
16 the guidelines, he would face, in any event, a Level 37 which
17 would be 360-to-life.

18 I think the only analysis, the analysis that
19 you made this morning, Mr. Andino, would have been, let's
20 say, that we didn't have a statutory issue. He would have
21 been at a Level 34 under the Career Offender and I think two
22 points would have been, well, let's say, he was just at a
23 Level 34, that would have been Criminal History Category VI
24 would have been 262-to-327.

25 Is that what you had calculated?

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1 MR. ANDINO: That's what I had argued under the
2 one-to-one ratio on the offense.

3 MR. AMATRUDA: And just, again, I don't know if
4 this is important or not, but that's based on no finding of
5 relevant conduct. That's just the seized amount of cocaine,
6 correct?

7 And the fact that we, in other words, it's
8 a -- as the defense poses it, means that there was only
9 122 grams seized, there was no relevant conduct, and we did
10 not pursue a count that was higher than the (b)(1)(c).

11 So, I guess, I have no disagreement with it if
12 that's the case or if even the 122 grams seized plus relevant
13 conduct. If we had not sought a higher count of conviction
14 then, that would be correct, the defense would be correct.

15 THE COURT: Okay. All right.

16 Do you want to be heard further now that we've
17 calculated the guidelines with respect to Mr. Taylor?

18 MR. ANDINO: You're asking me, Your Honor?

19 THE COURT: Yes. Did you want to say anything
20 further?

21 MR. ANDINO: I made my argument the last time and
22 whatever arguments I thought I would just like to say that I
23 think that Your Honor probably sees and sentences people
24 whose conduct is, I think, substantially worse than
25 Mr. Taylor.

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1 I understand Mr. Taylor has been convicted
2 here of dealing crack cocaine which is not a trivial thing
3 and I understand what the guidelines here are doing in terms
4 of criminal history.

5 As I said before, Mr. Taylor's modus in this
6 case was devoid of any allegation of violence. The
7 sentencing guidelines, to the extent that the Commission does
8 empirical studies, periodical empirical study, the crack
9 cocaine universe is found to be violent, to be more violent
10 than the powder cocaine universe.

11 I'm sure if there had been any hint at
12 violence in Mr. Taylor's modus we would have heard about it
13 at length. And I do think that Mr. Taylor, notwithstanding
14 everything that's been said, notwithstanding the fact that he
15 switched cars to travel or whatever is essentially -- not a
16 big-time crack dealer. And we're talking about the
17 difference between him being in jail until his mid-60s and
18 him being in jail until his mid-70s, and I do believe that a
19 sentence closer to the statutory minimum or at the statutory
20 minimum would certainly achieve all the purposes that the
21 guidelines want us to achieve and would immobilize and
22 confine Mr. Taylor until well beyond any time where he is
23 going to be any threat again to engage in any kind of drug
24 dealing. I've said it before in my papers but I would like
25 to repeat it.

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1 THE COURT: Does the Government want to add
2 anything further before I hear from Mr. Taylor.

3 MR. AMATRUDA: No thank you, Judge. To the extent
4 that I had disagreements with the defense including what I
5 just said, I think that's been referred to has all been
6 address.

7 Thank you.

8 THE COURT: Do you want to say anything before the
9 Court imposes sentence, Mr. Taylor.

10 THE DEFENDANT: Your Honor, I don't know what else
11 to say but I appreciate Mr. Andino a lot. He got to know me
12 very well and I'm glad that he took time out with me.

13 But, I am being sentenced now through the
14 testimony of Ms. Hiatt; and the testimony of Ms. Hiatt wasn't
15 all true, Your Honor, it really wasn't. I never met her. We
16 met in January, she says it in her testimony, when she met me
17 is when the car incident happened which was in June.

18 I just got released from Rikers Island in
19 January, I was nowhere near Tennessee then. She make these
20 accusations up, Your Honor, because she's speaking because
21 she doesn't want to be prosecuted.

22 The longest I knew Ms. Hiatt in 2006, Your
23 Honor, was probably roughly about two and a half months of
24 the we never met.

25 And, Your Honor, when I got on that phone and

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1 I was talking about Ms. Wright, I didn't try to bribe her. I
2 was worried that when she came home on bail, family members
3 were saying that she was setting me up. Family members
4 saying she was testifying against me. I got pissed off on
5 the phone. I don't know, God. It's just the phone
6 conversation didn't make me look as bad as I was trying to,
7 Your Honor, which I was not I was just trying to help
8 Ms. Wright, Your Honor.

9 I really can't speak because my lawyer told me
10 not to really go back into the case, whatever, but I just
11 would hope that, you know... I forever glorified my past
12 tense life that was something I never tried to make it seem
13 like what I'm doing is the right thing.

14 And last time I was here on January 20th,
15 Mr. Amatruda said I never tried. I tried my hardest to try
16 to seek employment. I really did. God knows that my mother
17 is here, she will even tell you that. I tried my hardest. I
18 don't think it was right for me to make the choice to go back
19 to the streets, it wasn't. But can't nobody sit here and say
20 what I didn't try to do. I can go on about myself but I
21 don't know what -- I really don't know what to say right now,
22 but I hope that, you know, whatever decision you make I guess
23 I'll just have to go by what decision you make, Your Honor.

24 Thank you.

25 THE COURT: All right. Well, we -- I have

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1 calculated a guideline range here which, giving the defendant
2 the full benefit of most of his arguments, still remains
3 360-to-life which, of course, is an extremely high guideline.

4 The Court has to take that guideline into
5 account in determining what the appropriate sentence is.
6 Ultimately, the Court is called upon to impose a sentence
7 that's sufficient but not greater than necessary to comply
8 with certain sentencing factors that are set forth in
9 §3553(a) of Title 18 and those include the need for the
10 sentence imposed to reflect the seriousness of the offense
11 and this offense, as everyone knows, and as we've discussed
12 here, is a very serious one.

13 It involves the distribution of crack cocaine.
14 This is not the first time that the defendant has been
15 convicted of that activity. I think he had the prior case
16 from Tennessee, if my recollection serves me correct, was
17 involved crack cocaine.

18 Even if one were not to consider the testimony
19 of Ms. Hiatt, it is plain, based on the convictions alone
20 that the defendant has been engaged in crack cocaine dealing
21 for a period of time.

22 The sentence has to promote respect for the
23 law and to provide just punishment for the offense and to
24 afford adequate deterrence to criminal conduct, and I think
25 that deterrence is a consideration in this particular case,

1 specific deterrence in light of the fact that Mr. Taylor,
2 having gotten out of prison after having been convicted of a
3 crack cocaine offense resumed again involving himself in
4 crack dealing then had a violation of supervised release.
5 And even after being released from that, apparently learned
6 nothing from the experience because he once again began
7 engaging in crack cocaine dealing. And there is certainly
8 the sentence here has to afford specific deterrence to
9 Mr. Taylor and his documented propensity to continue to
10 engage in crack cocaine dealing.

11 The Court has to consider the nature and
12 circumstances of the offenses and, again, I found the
13 testimony of Ms. Hiatt to be credible. But even putting that
14 aside, or even not considering that the circumstances of the
15 individual arrest were a significant serious offense
16 involving 122 grams of crack cocaine, specifically, or
17 especially in light of his prior dealings.

18 In looking at the history and characteristics
19 of the defendant. I think despite what I think are the
20 considerable advocacy skills of Mr. Andino, unfortunately,
21 there is not much positive to say about the defendant. He
22 apparently has chosen to live the majority of his life
23 committing crimes. He was, as I've mentioned before, an
24 incorrigible crack dealer when released from one offense he
25 almost immediately was back on the street selling crack.

1 Counsel pointed out on his behalf that he
2 stopped at one point selling heroin because of its
3 devastating impact but that would cause the Court to wonder
4 if he ever took the time to observe some of his
5 crack-addicted clients.

6 His record in prison is problematic. There
7 were a number of incidents and violations while in prison.
8 He had infractions for being insolent to the staff possessing
9 dangerous weapons, stealing, and assaultive conduct.

10 So, the history and characteristics here are
11 not favorable. The sentence here, though, the guideline
12 sentence of 30 years, even with for someone with Mr. Taylor's
13 background, in this Court's view, is excessive in light of a
14 couple of factors.

15 I think sentences such as that are appropriate
16 in some cases, cases where weapons are involved where
17 violence is involved. I think a sentence in that
18 neighborhood might well be justified. There was, in his
19 recent criminal history, and certainly in connection with the
20 offense, no evidence of any weapons or violence.

21 Perhaps the more appropriate consideration is
22 concerns about both his age and his health. He is, I
23 believe, now 45 years old. He has diabetes. I think that
24 these are considerations which result in a shortened life
25 expectancy.

Sentencing

25

1 Although Mr. Taylor's conduct was certainly
2 significant criminal conduct, I don't think that it justifies
3 what in effect would be a life sentence for him as serious as
4 the conduct undoubtedly is.

5 Having considered the guidelines and
6 considered the factors in §3553(a), I'm going to sentence
7 Mr. Taylor to the custody of the Bureau of Prisons for a
8 period of 270 months to be followed by a five-year term of
9 supervised release.

10 I'll impose a hundred dollar special
11 assessment; I won't further impose a fine. It doesn't appear
12 that he has any ability to pay a fine.

13 Mr. Taylor, you have a right to appeal your
14 sentence. Any Notice of Appeal has to be filed within
15 14 days of the Court's judgment.

16 Do you understand that?

17 THE DEFENDANT: Yes.

18 THE COURT: Is there anything further that we need
19 to take up? Do you want a recommendation that he sentenced
20 to a facility closer to the Northeast area?

21 THE DEFENDANT: I wanted to ask if you could put in
22 a recommendation that I be placed closer to home because my
23 mother is ill.

24 THE COURT: Home is New York?

25 THE WITNESS: New York, yes.

Sentencing

26

1 THE COURT: I'll make that recommendation.

2 THE WITNESS: Thank you.

3 THE COURT: And you're going to void the separation
4 order, correct?

5 MR. AMATRUDA: I'm not going to void -- there's no
6 separation order. If I'm asked, as I said before --

7 THE COURT: I thought there was an order.

8 MR. AMATRUDA: The way I understand it, Judge, is
9 that I request that certain prisoners separated. As I
10 explained earlier, the Bureau of Prisons contacts me from
11 time to time and asks me whether prisoners who then passed on
12 to their institution where they've been assigned should
13 continue to be separated, and in that instance, what I said I
14 would do is tell them that I didn't see any reason why I feel
15 they should continue to be separated.

16 THE COURT: There's nothing extant?

17 MR. AMATRUDA: Yes, there is. It's just not an
18 order, I don't think Your Honor ordered anything.

19 THE COURT: Whatever you have to do to lift that,
20 can you to that?

21 MR. AMATRUDA: Yes.

22 THE COURT: Okay. Anything else?

23 MR. ANDINO: No.

24 MR. AMATRUDA: No.

25 THE COURT: Okay.

Sentencing

27

1 MR. ANDINO: Your Honor, if I may?

2 When I agreed to this, I know the marshals
3 don't like it, but when I agreed to today's adjourn date it
4 slipped my mind that Tuesday is when he receives his family
5 visits and I was just going to ask if he can speak briefly to
6 his family. I know the Court doesn't like that.

7 THE COURT: I'm really sorry and I'm sorry about
8 the problem with the adjourn date but it causes security
9 issues for the marshals and I don't want to put them in that
10 position.

11 (Defendant exits from courtroom.)

12 (WHEREUPON, the proceedings were adjourned.)

13 * * *

14 CERTIFICATE OF REPORTER

15 I certify that the foregoing is a correct transcript of
16 the record of proceedings in the above-entitled matter.

17

18

19 _____
20 Anthony D. Frisolone, CSR, RDR, CRR, CRI
Official Court Reporter

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